

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

: MDL NO. 1355
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: SECTION: L
:
: JUDGE FALLON
: MAG. JUDGE AFRICK
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**IN RE: PROPULSID
 PRODUCTS LIABILITY LITIGATION**

THIS DOCUMENT RELATES TO ALL CASES

**JOINT REPORT NO. 12 OF
PLAINTIFFS' AND DEFENDANTS' LIAISON COUNSEL**

Plaintiffs' Liaison Counsel (PLC) and Defendants' Liaison Counsel (DLC) jointly submit this Report No. 12.

I. Master Complaint/Answer - (PTO 2 - VI(B))

PLC filed the Master Class Action Complaint on October 5, 2001. Defendants filed a Master Answer on November 13, 2001. This item may be removed from the Agenda.

II. Update of Rolling Document Production and Electronic Document Production - (PTO 2 - IX)

DLC advises the November production of documents comprises approximately 237,855 pages of documents from Beerse delivered on CD-ROM and additional domestic production of 3,356 pages.

Since September 7, 2001, no additional electronic data has been received by PLC from defendants. Further, PLC is still waiting for the comprehensive listing of all information reserved and/or redacted from the CFR and TMF/LMD databases as well as the reason for Janssen's determination that certain records should not be disclosed. This information was requested on September 20, 2001 and PLC is awaiting a response. Further, PLC advised that it desired to obtain one comprehensive and complete production of each database and requested a new CD containing the complete database. DLC advised at the October status conference that it was gathering this information and would provide PLC with a privilege log identifying the documents withheld and/or redacted and the basis for such action. The parties will be prepared to discuss this at the November 30, 2001 Monthly Status Conference.

On October 26, 2001, DLC forwarded to PLC a production of approximately 135 videotapes as part of the media production. There are additional media to produce which have been retained by Defendants, pending resolution of confidentiality concerns. PLC is waiting for a proposal from DLC to address these concerns. In addition, an issue remains regarding the quality of some of the tapes produced. PLC requested that the originals be provided to PLC for duplication. PLC and DLC are discussing this further.

The parties are continuing discussions regarding a nominee for Special Master as required by Section H(3) of PTO 10.

III. State Liaison Counsel - (Minute Entry, November 16, 2000)

PLC has had a number of telephone conferences and meetings with attorneys involved in state court

litigation primarily to discuss the Injunction Motion. Several meetings have taken place to coordinate brief writing, preparation for oral argument and responses to the motion.

IV. Patient Profile Form and Authorization

As of Monday, November 26, 2001, Defendants have received 1,185 Patient Profile Forms (PPFs). 103 are currently overdue, and 10 PPFs will become due within thirty (30) days. PLC and DLC continue to communicate directly with plaintiff counsel whose PPFs are overdue.

Defendants have investigated the circumstances regarding the plaintiffs (Chapman, Vernon, Gill, McGowan, Starkey, Duet and Fredrick) whose PPFs were misplaced as a result of Tropical Storm Allison. Counsel for these plaintiffs have submitted affidavits to DLC, which Defendants have accepted, and have submitted PPFs for all aforementioned plaintiffs except Lillie Rose Chapman. Defendants withdraw their Motions to Dismiss as to the plaintiffs who have submitted PPFs and renew their Motion to Dismiss with Prejudice as to Ms. Chapman.

In addition, Defendants wish to renew their Motion to Dismiss with Prejudice as to Betty Manasco, individually and on behalf of the Estate of Rickey Manasco, as Ms. Manasco has failed to furnish Defendants with her PPF, in violation of Pre-Trial Order No. 9, and has also failed to adequately substantiate the reason for the delinquency of her PPF.

At this time, Defendants also seek the dismissal of Charles Long with prejudice for his violation of Pre-Trial Order No. 9 for failure to furnish a PPF to Defendants. Mr. Long has not opposed this Motion, instead, he has filed a Motion for Voluntary Dismissal. Defendants oppose such Motion on the grounds

set forth in their opposition memorandum as well as their own Motion to Dismiss.

At last month's status conference, DLC informed the Court Defendants had received numerous PPFs with no medical and/or employment authorizations attached. Since such time, Defendants have received approximately one-half of the outstanding authorizations. DLC advises Defendants will bring a Motion to Compel and Secondly to Dismiss with Prejudice as to the plaintiffs who have failed to furnish any authorizations whatsoever for the January, 2002 status conference. DLC will provide PLC with a list of plaintiffs who will be subject to these Motions during the first week of December. PLC has consistently advised that upon notice it will seek to assist in gathering PPFs with any alleged deficiencies.

In addition, Defendants have raised concern regarding the plaintiffs who have submitted restricted authorizations to Defendants. PLC and DLC are continuing discussions regarding this issue; however, DLC advises if the parties are unable to agree on this issue, Defendants will bring a Motion to Enforce Pre-Trial Order No. 9 as to these plaintiffs at the January status conference. PLC objects to the use and defendants obtaining blanket authorizations.

V. Subpoena to FDA

The FDA provided to Defendants on September 19, 2001 the balance of all documents it claims are responsive to the subpoena. On October 19, 2001, PLC wrote counsel for FDA and advised that bates number FDA00001 through FDA09394 had been received by the PLC and that certification as to accuracy of the documents produced was requested. Thereafter on November 1, 2001, PLC wrote counsel for FDA and advised that it had received bates numbered documents FDA0001 through

FDA22944 from defendants and requested certification from the FDA that all of the documents (except those claimed to be privileged) produced by the FDA to the defendants had been received by PLC. FDA has advised that it is in the process of preparing the certification. PLC is awaiting a response.

PLC has questioned some FDA documents claimed to be privileged by the defendants. PLC and DLC are discussing this issue.

VI. Service List of Attorneys

The parties will present the Court with the most current Master List of all Counsel, which will contain, where available, e-mail addresses.

VII. Ongoing Studies/Subpoena to BevGlen

The parties have negotiated an order regarding scientific studies. The order was submitted to the court on November 26, 2001.

On November 12, 2001, DLC produced to PLC the BevGlen documents that it collected and reviewed. A log of documents withheld or redacted by Defendants was delivered shortly thereafter. The parties are awaiting a certification from BevGlen representative, Tim Callahan as to the produced documents. Defendants have contacted Mr. Callahan several times regarding this certification, but have not heard a response. PLC awaits receipt of a certificate.

On October 25, 2001, counsel for Dr. Levy produced documents responsive to the subpoena duces tecum issued to Dr. Levy. PLC bates numbers and imaged all documents. PLC provided DLC a copy of all documents on CD to the defendants.

An issue has arisen regarding the privacy of individuals whose identities were not redacted by Dr. Levy prior to production of the documents. PLC and DLC are discussing how to protect the privacy of these named individuals in the event any privilege may exist.

VIII. Third Party Subpoena Duces Tecum Issued by PSC

Defendants forwarded to PLC on October 26, 2001, certifications it obtained from third party entities relating to documents produced responsive to subpoena duces tecums. On November 1, 2001, PLC advised DLC about concerns it had regarding the certifications. Specifically, PLC advised that the certifications did not state that the bates numbers were placed on the document prior to the document being turned over to the defendants, that the certifications did not identify the number of bates numbered documents produced by the third party entity and that the certifications did not state that PLC or the PSC had received all of the documents responsive to the subpoena duces tecum except those that may be identified on a privilege log submitted by the defendants. DLC advises that it is seeking to address the issues by obtaining additional certifications from defense counsel, John Winter of Patterson, Belknap, Webb & Tyler. PLC has not yet seen the contemplated certification. The parties will be prepared to discuss this at the November 30, 2001 Monthly Status Conference.

PLC is awaiting documents subpoenaed from Covance and to be provided to PLC and DLC.

PLC will advise the court as to the status of third party subpoena duces tecums as issues arise in the course of discovering information.

IX. Motion to Enter Scheduling Order for Motion and Hearing on Class Certification.

DLC filed with court a Motion for Entry of Pre-Trial Order Re: Motion and Hearing for Class Certification. PLC filed an Opposition to Defendant's Submitted Pre-Trial Order No. ____ (Motion and Hearing for Class Certification). The issues in dispute are set forth in the motion and opposition. The parties will be prepared to discuss this in more detail at the November 30, 2001 Monthly Status Conference.

X. Plaintiffs' and Defendants' Respective Requests for Production of Documents

On October 31, 2001, PLC wrote DLC regarding outstanding discovery due from defendants in a Tennessee action that was removed to the MDL. Plaintiffs counsel in Tennessee also inquired as to discovery responses due from the defendants. The parties will be prepared to discuss this at the November 30, 2001 Monthly Status Conference.

On June 5, 2001, Defendants served their Request for Production of Documents Propounded to Plaintiffs - Set No. Two. Defendants are awaiting a response.

XI. Briefing and Hearing on Injunction Motion

On November 28, 2001 oral argument was heard on the Defendant's Motion for Injunction. No further discussion on this is necessary at the present time.

XII. Agenda

A proposed Agenda for the November 30, 2001 Status Conference is attached.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Joint Report No. 12 of Plaintiffs' and Defendants' Liaison Counsel was served on Plaintiffs' Liaison Counsel by hand and e-mail and by e-service to all parties by uploading same to Verilaw, on this ____ day of November, 2001.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

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: **JUDGE FALLON**
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Monthly Status Conference November 30, 2001 9:00 a.m.

AGENDA

Current Matters:

1. Master Complaint/Answer
2. Update of Rolling Document Production and Electronic Document Production
3. State Liaison Counsel
4. Patient Profile Form and Authorization
5. Subpoena to FDA
6. Service List of Attorneys
7. Ongoing Studies/Subpoena to BevGlen
8. Third Party Subpoena Duces Tecum Issued by PSC
9. Motion to Enter Scheduling Order for Motion and Hearing on Class Certification

10. Plaintiffs' and Defendants' Respective Requests for Production of Documents
11. Briefing and Hearing on Injunction Motion

New Matters:

1. Status of databases - letter of September 20, 2001
2. Price and Oliver depositions - September 5, 2001 letter - PLC received depositions and exhibits to Oliver. Missing exhibits to Price.
3. Carr and Zipes depositions - September 21, 2001 letter - PLC has not received the deposition to Carr or Zipes (page numbers missing) and have not received the exhibits to Carr. PLC has exhibits to Zipes.
4. Texas depositions - September 26, 2001 letter - PLC does not have exhibits to Fernandez, Williams, Davis or Ferguson. PLC has deposition on all.
5. Chuen Yee deposition - October 1, 2001 letter - PLC has deposition, do not have exhibits.
6. Fernandez, Williams, Davis & Ferguson deposition - October 10, 2001 letter - PLC has deposition. Missing exhibits.
7. Morganroth deposition exhibits - October 16, 2001 letter - PLC has deposition, missing exhibits.
8. Posting of Verilaw depo dates - October 4, 2001 letter
9. Master complaint medical information obtained from defendants - October 11, 2001 letter.
10. Scheduling of depositions - coordination w/states
11. SDT issued to Shell
12. Plaintiffs Petition for Fees